

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE WESTERN DISTRICT OF MICHIGAN**
3 **SOUTHERN DIVISION**

4 Cheryl Finn Westerkamp,

5 Plaintiff,

6 v.

7 The Gathering Barn, LLC,

8 Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

9 Plaintiff Cheryl Finn Westerkamp (“*Plaintiff*”), by and through her undersigned
10 counsel, for her Complaint against Defendant The Gathering Barn, LLC (“*Defendant*”) states
11 and alleges as follows:
12

13 **INTRODUCTION**

- 14 1. This action seeks to recover damages for copyright infringement.
- 15 2. Plaintiff herein creates photographic images and owns the rights to these images
16 by which Plaintiff uses to advertise her handmade products.
- 17 3. Defendant advertises its business on a website known as www.findglocal.com
18 (the “*Website*”).
- 19 4. Defendant, without permission or authorization from Plaintiff actively copied,
20 stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct
21 knowingly and in violation of the United States copyright laws.
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PARTIES

5. Plaintiff Cheryl Finn Westerkamp is an individual who resides in the state of New Jersey and who maintains a principal place of business in Sussex County, New Jersey.

6. Upon information and belief, Defendant The Gathering Barn, LLC, is a Michigan limited liability company with a principal place of business at 828 Rawson Road, Coldwater in Branch County, Michigan and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over The Gathering Barn, LLC because it maintains its principal place of business in Michigan.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because The Gathering Barn, LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff uses to advertise her handmade products.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. The Gathering Barn, LLC created and thereafter posted the article on the Website and is responsible for its content.

1 15. On April 1, 2019, Plaintiff authored a photograph of two wooden wedding
2 signs stating “He asked...and she said YES!” (the “*Photograph*”). A copy of the Photograph
3 is attached hereto as Exhibit 1.

4 16. The Photograph was registered by the USCO on April 18, 2019 under
5 Registration No. VA 2-149-619.

6 17. On May 5, 2021, Plaintiff first observed the Photograph on the Website in a
7 story dated October 18, 2020. A copy of the screengrab of the Website including the Photograph
8 is attached hereto as Exhibit 2.

9 18. The Photograph was displayed at URL:
10 [https://www.findglocal.com/US/Coldwater/107941623917919/The-Gathering-](https://www.findglocal.com/US/Coldwater/107941623917919/The-Gathering-Barn?_cf_chl_tk=GQgcqmpDLB3Knc64cRi8LEiA4mLPrsX4Rl6RBezK00U-1643730427-0-gaNycGzNCKU)
11 [Barn?_cf_chl_tk=GQgcqmpDLB3Knc64cRi8LEiA4mLPrsX4Rl6RBezK00U-1643730427-](https://www.findglocal.com/US/Coldwater/107941623917919/The-Gathering-Barn?_cf_chl_tk=GQgcqmpDLB3Knc64cRi8LEiA4mLPrsX4Rl6RBezK00U-1643730427-0-gaNycGzNCKU)
12 [0-gaNycGzNCKU](https://www.findglocal.com/US/Coldwater/107941623917919/The-Gathering-Barn?_cf_chl_tk=GQgcqmpDLB3Knc64cRi8LEiA4mLPrsX4Rl6RBezK00U-1643730427-0-gaNycGzNCKU).

13 19. The Photograph was stored at URL:
14 <https://img3.findglocal.com/313/730/382414393137306.jpg>

15 20. Without permission or authorization from Plaintiff, Defendant volitionally
16 selected, copied, stored and displayed Plaintiff’s copyright protected Photograph as is set forth
17 in Exhibit “1” on the Website.

18 21. Upon information and belief, the Photograph was copied, stored and displayed
19 without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter the
20 “*Infringement*”).

21 22. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
22 tangible medium of expression that was sufficiently permanent or stable to permit it to be
23 communicated for a period of more than a transitory duration and therefore constitutes a specific
24 infringement.

25 23. The Infringement is an exact copy of the entirety of Plaintiff’s original image
26 that was directly copied and stored by Defendant on the Website.

27 24. Upon information and belief, the Photograph was willfully and volitionally
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1 posted to the Website by Defendant.

2 25. Upon information and belief, Defendant engaged in the Infringement knowingly
3 and in violation of applicable United States Copyright Laws.

4 26. Upon information and belief, the Photograph is readily identifiable as copyright
5 protected as it contains a copyright watermark on the image, thereby making Defendant's
6 infringement willful as a matter of law.

7 27. Upon information and belief, Defendant had complete control over and actively
8 reviewed and monitored the content posted on the Website.

9 28. Upon information and belief, a large number of people have viewed the unlawful
10 copies of the Photograph on the Website.

11 29. Upon information and belief, Defendant at all times had the ability to stop the
12 reproduction and display of Plaintiff's copyrighted material.

13 30. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
14 potential market for the Photograph.

15 31. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

16 **FIRST COUNT**

17 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

18 32. Plaintiff repeats and incorporates by reference the allegations contained in the
19 preceding paragraphs, as though set forth in full herein.

20 33. The Photograph is an original, creative work in which Plaintiff owns valid
21 copyright properly registered with the United States Copyright Office.

22 34. Plaintiff has not licensed Defendant the right to use the Photograph in any
23 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

24 35. Without permission or authorization from Plaintiff and in willful violation of
25 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
26 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
27 thereby violating one of Plaintiff's exclusive rights in its copyrights.

- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against the Defendant for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: April 19, 2023

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